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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP-2021-0029]

Receipt of Domestic Interested Party Petition Concerning the Tariff Classification of Steel Table Pans

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: U.S. Customs and Border Protection (CBP) has received a petition submitted on behalf of a domestic interested party requesting the reclassification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain steel table pans. CBP currently classifies the subject steel table pans under subheading 7323.93.00, HTSUS, as table, kitchen or other household articles and parts thereof of iron or steel, other, other, of stainless steel. Petitioner contends that the proper classification for the subject steel table pans is under subheading 8419.90.95, HTSUS, as parts of steam tables, which are machinery for the treatment of materials by a process involving a change of temperature such as ... steaming, other than machinery of a kind used for domestic purposes. This document invites comments with regard to the correctness of the current classification.

DATE: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by docket number, by the first method listed below:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2021-0029.
- Mail: Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this notice of domestic interested party petition concerning the tariff classification of steel table pans. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents, exhibits, or comments received, go to <http://www.regulations.gov>. Due to the relevant COVID-19-related restrictions, CBP has temporarily suspended on-site public inspection of public comments.

FOR FURTHER INFORMATION CONTACT: Anthony L. Shurn, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, Customs and Border Protection, at (202) 325-0218, or by email at anthony.l.shurn@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of The Vollrath Company, LLC (Vollrath or Petitioner), which is a commercial and consumer food service equipment manufacturer and supplier based in Sheboygan, Wisconsin. Vollrath meets all of the requirements of a domestic interested party set forth in 19 U.S.C. 1516(a)(2) and section 175.3(a) in title 19 of the Code of Federal Regulations (CFR) (19 CFR 175.3(a)).

In New York Ruling (NY) C87748 (May 27, 1998), CBP's predecessor, the U.S. Customs Service (Customs), stated that "steam table pans and chafers of stainless steel" are "items [that] come in various sizes. They are intended to be placed in a steam table or in a food warmer to keep food hot. They can not [sic] be used on top of a stove." CBP classified the "steam table pans and chafers of stainless steel" under subheading 7323.93.00, HTSUS, which provides for "Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel: Other: Of stainless steel." Petitioner contends that the proper classification for the steel table

pans is under subheading 8419.90.95, HTSUS, which provides for “Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof: Parts: Other”.

Applicable Legal Principles

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (ARIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* Treasury Decision (T.D.) 89-80, 54 FR 35127, 35128 (August 23, 1989). The EN for heading 73.23, states, in pertinent part, that this group comprises a wide range of iron or steel articles, not more specifically covered by other headings of the Nomenclature, used for table, kitchen or other household purposes; it includes the same goods for use in hotels, restaurants, boarding-houses, hospitals, canteens, barracks, etc. The EN further states, in pertinent part, that the group includes articles for kitchen use such as steamers and preserving pans and that the group also includes

iron or steel parts of the article listed above such as separating compartments for pressure cookers.

Elaboration of Petitioner's Views

Petitioner contends that the proper classification for the subject steel table pans is subheading 8419.90.95, HTSUS, which provides for "Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, nonelectric; parts thereof." Petitioner contends that between the classifications that merit consideration, heading 8419, HTSUS, is the most appropriate because steel table pans are not table, kitchen or other household articles of heading 7323, HTSUS. Petitioner further states that classification of the steel table pans as a part of steam tables and commercial chafers within heading 8419, HTSUS, is supported by the tariff headings, the EN to heading 8419, HTSUS, and court decisions that establish the definition of a "part."

Petitioner contends that steam tables are classified under subheading 8419.81.90, HTSUS, in reliance upon Customs' ruling in NY N836798 (February 22, 1989), which classified a food warmer used to transport food to various areas located within commercial establishments, and the EN to heading 84.19. Subheading 8419.81.90, HTSUS, provides for "Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes: Other machinery, plant and equipment: For making hot drinks or for cooking or heating food: Other."

According to the Petitioner, steam tables, which are gas or electric powered machines used in commercial food service operations to heat and hold prepared food, are a type of steam-heated cooker, and that steam tables are appropriately classified under heading 8419, HTSUS, in reliance upon Part I (17) to EN 84.19, which includes specialized heating or cooking apparatus which are not normally used in the household (e.g., steam-heated cookers, hot-plates, warming cupboards, drying cabinets, etc.). Petitioner asserts that the subject steel table pans are parts of steam tables in reliance upon the notes to Section XVI, HTSUS, which provide, in pertinent part, that parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading are to be classified with the machines, instruments, or apparatus of that kind. Petitioner advises that the subject steel table pans are specifically designed to fit within the standard size well of a steam table, transfer heat from the steam to the food, and withstand extended exposure to steam, and therefore, that the steel table pans are principally used with steam tables.

Petitioner advises that CBP's rulings are inconsistent. Petitioner references NY C87748 (May 27, 1998) in which Customs classified steam table pans and chafers of stainless steel under subheading 7323.93.00, HTSUS; NY N199500 (January 24, 2012), in which CBP rejected classification of chafing dishes heated by sterno candles under subheading 8419.81.90, HTSUS, because the unit was not mechanical; and, NY C88591 (July 1, 1998), in which Customs classified a similar chafer set with water pan, food pan, and cover under subheading 8419.81.90, HTSUS. According to Petitioner, unlike the products of NY N199500, the steel table pans at issue here are not excluded from heading 8419 because they are specifically designed to be used with electric or gas-powered steam tables. Petitioner notes that the subject steel table pans should be classified in accordance with NY C88591 under heading 8419, HTSUS.

Analysis Used by CBP in Prior Rulings

Note 1(f) to Section XV, HTSUS, provides in pertinent part that this section does not cover articles of section XVI (machinery, mechanical appliances and electrical goods). Subheading 7323.93.00, HTSUS, provides, in pertinent part, for “Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel: Other: Of stainless steel.” CBP has classified stainless steel cookware, including chafing dishes and steam pans, under heading 7323, HTSUS, where the merchandise is not mechanical or electric. *See* NY C87748 and NY N199500. As noted above, however, in NY C88591, CBP’s predecessor classified a chafer set with water pan, food pan, and cover in subheading 8419.81.90, HTSUS.

Comments

Pursuant to section 175.21 of the CBP Regulations (19 CFR 175.21), before making a determination on this matter, CBP invites written comments on the petition from interested parties.

The domestic interested party petition concerning the tariff classification of certain steel table pans, as well as all comments received in response to this notice, will be available for public inspection on the docket at www.regulations.gov.

Authority

This notice is published in accordance with 19 U.S.C. 1516 and section 175.21 of the CBP Regulations (19 CFR 175.21).

Troy A. Miller, the Acting Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the *Federal Register*.

Dated: August 6, 2021.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division,

Regulations & Rulings,

Office of Trade,

U.S. Customs and Border Protection.

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